

APPROVED MAY 10, 2006



**SCOTTSDALE PLANNING COMMISSION  
CITY HALL KIVA  
3939 NORTH DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA  
APRIL 26, 2006**

**REGULAR MEETING MINUTES**

**PRESENT:** Steve Steinberg, Chairman  
James Heitel, Vice-Chairman  
David Barnett, Commissioner  
Jeffrey Schwartz, Commissioner  
Steven Steinke, Commissioner

**ABSENT:** Kevin O'Neill, Commissioner  
Eric Hess, Commissioner

**STAFF PRESENT:** Lusia Galav  
Frank Gray  
Donna Bronski  
Sherry Scott  
Kelly Ward  
Donna Bronski

**CALL TO ORDER**

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:01 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**APPROVED**

**NON-ACTION ITEM**

**1. Introduction**

Ms. Galav explained that in response to a request by the Commission, the meeting would be a study session discussing the process, procedures and legal issues surrounding abandonments in the City of Scottsdale.

Mr. Ward and Ms. Bronski would give a presentation concerning legal background. The Planning staff would discuss planning issues and review abandonment categories and the process of abandonment. Staff from Preservation and Transportation was present to answer questions pertaining to the facilitation of abandonments.

**2. Legal Background**

Ms. Bronski introduced Mr. Kelly Ward, one of the Senior Assistant City Attorneys and the most senior Real Estate Attorney. She noted that he has reviewed most of the real estate transactions that have gone through the City in the last twelve years.

Mr. Ward addressed the Commission. His presentation focused on the City's street and alley grid and how the City abandons public street rights-of-way, as opposed to disposing of other interests. He noted that under the law, street and alley rights-of-way are interchangeable and are treated the same.

Although it is often a topic of discussion, for the most part the source of a right-of-way is not relevant to a decision about abandonment. Mr. Ward clarified that information provided in his presentation applied equally regardless of the source of the abandonment.

Mr. Ward commented that the City's power to abandon comes under State statutes and there is a process that requires City Council to make final decisions. There are special provisions in the statutes that govern the creation of a private street once the City abandons a parcel of right-of-way to a Home Owners Association and there are specifications for other special circumstances. The new addition of a special statute that specifically confirms the City's ability to dispose of a GLO patent right-of-way leaves broad discretion to the City in abandonment cases.

Mr. Ward clarified that the City makes abandonment decisions subject to limitations, including notice requirements of the State and the City, and a prohibition on abandoning a right of way if doing so would create a landlocked parcel.

With general limits, the City has a broad discretion of what factors it can consider. The City can consider any factor that is related to the benefits or burdens to the public. Factors depend on recommendations from various City departments which have an independent say in shaping the recommendations given to the Planning Commission and City Council.

Mr. Ward opined that principally whether a particular right-of-way should be abandon is not a legal question. Rather, it is a community development question.

Commissioner Schwartz asked whether there are any legal requirements that a percentage of the residents affected approve of an abandonment. Mr. Ward explained that if the alley was going to be abandoned pursuant to an auction there would be a public notice requirement, but the State statutes in general do not require consent of any of the adjoining property owners. The City has processes that are not required by the State statute that provide for notice; staff would be able to explain how those work.

In response to a question by Chairman Steinberg about precluding rights-of-way from having historic designation, Mr. Ward stated that there is nothing in the State statutes that makes any sort of a distinction based on the historic nature of a neighborhood.

Commissioner Barnett inquired whether the format of considering projected or desired traffic levels, modes of transportation, aesthetics, public safety, et cetera was the most rigid format available for forming an abandonment decision. Ms. Bronski suggested that the Planning Staff presentation may answer that question. In response to a question by Commissioner Barnett about whether Scottsdale used the same process as other cities in the Valley, Mr. Ward stated that the legal principles are applicable to all area cities.

Vice-Chairman Heitel inquired what authority the City would have to completely abandon a plat that had been dedicated to the general public prior to the subdivision ordinances. Mr. Ward explained that the City no longer accepts dedications to the public; real estate must now be deeded over to an identifiable corporation. Courts understand that State statutes provide for the local jurisdiction to be trustee with authority over a right-of-way dedication to the public. Those dedications should be treated as if they were made directly to the City of Scottsdale.

Commissioner Barnett inquired whether there would be a differentiation between an air abandonment or an air corridor, an abandonment underneath the street, and a traditional abandonment. Mr. Ward explained that air and underground abandonments are handled on an individual basis. State statutes authorize processes that allow granting of an easement. In the case of the bridge at Fashion Square, an easement was granted in exchange for land the City needed for a right-of-way along Camelback Road.

In response to an inquiry by Commissioner Barnett concerning frequency of requests for air abandonments, Mr. Ward stated that he was not sure how often the question arises; there are legal mechanisms to deal with such cases. The Economic Development Department would work through the issue from a business perspective.

3. **Planning Issues:**

Ms. Galav noted that she would discuss the City's process for abandonment. She mentioned that there is a pamphlet available in the One Stop Shop that goes through the basic process requirements for abandoning public roadway right-of-way.

**Abandonment Categories**

Ms. Galav reviewed the different abandonment categories. The categories which would allow for an abandonment included right-of-way for commercial properties as part of a subdivision, re-plats based on creating new street configurations or going from public to private streets, alleyways, the presence of excess right-of-way above and beyond what is needed for a particular classification of street, and residential alignments that are not necessary or are being re-platted in a different way.

Ms. Galav noted that any street right-of-way that the City acquired and paid for would not go through the abandonment process; they would require Commission approval and those parcels are sold at auction.

**Abandonment Process**

The current abandonment process is handled by the Planning Department with input from other departments.

Ms. Galav reviewed the steps required as part of the abandonment process. Cases receive a case number with the submission of the pre-application. Staff meet with the applicant to obtain information needed to file a formal application. Once the formal application is filed, a staff review is conducted which includes an abandonment and land division meeting. A staff report is prepared and brought before the Planning Commission for recommendation. The application is reviewed and a resolution prepared by the Legal Department prior to being presented to City Council. Upon approval, the resolution is adopted and recorded.

Ms. Galav clarified that several entities review an abandonment when it comes in, including Transportation, Trails, Preservation, Emergency Services, Sanitation, Current Planning, Engineering, Drainage and Flood, Public Utilities, Community Development, and the Legal Department. The abandonment and lot division meeting is held biweekly and includes representatives from many of those entities. Ms. Galav reviewed the criteria that are used to determine whether an abandonment should go forward and be approved.

4. **Questions**

Commissioner Schwartz opined that a public outreach similar to that used in the zoning process should be added to the criteria for an abandonment application. The checklist of requirements should include both an outreach program and criteria by which affected neighbors approve the abandonment before the full application is accepted.

Vice-Chairman Heitel commented that many area cities will not accept an alley abandonment unless seventy-five percent of the adjoining beneficial property owners approve it. The Planning Commission avoids having to hear public input and take a decision. Ms. Galav stated that she had worked in municipalities that had a percentage requirement and that adding the requirement could be considered. Commissioner Schwartz concurred that many issues could be avoided by such a requirement.

Commissioner Barnett opined that abandonment requests should be posted, because the citizens have a right to notification and to be allowed to publicly comment. Ms. Galav noted that all interested parties, Home Owners Associations, and property owners within 750 feet are notified. Commissioner Barnett clarified that notification should be posted in order for everyone who uses the area to have the opportunity to provide input.

Ms. Galav mentioned that most abandonments are processed reactively. Abandonments are not conducted proactively, unless they are related to a capital project. She researched Scottsdale's recent abandonment history and reported that in 2005 the Planning Commission heard 26 abandonment cases, five of which were GLO-related. So far in 2006 there have been six abandonment requests.

Vice-Chairman Heitel commented that there may be a desire to maintain an ability to utilize non street portions of rights-of-way for other uses that may come about in the future. He noted that he would be curious to explore utilizing or maintaining an easement over some of the parcels so that in the future the City has the ability to be proactive with the neighborhoods. Ms. Galav noted in many cases the applicant rededicates the easements to accommodate the utilities or a trail or some other use; the City would be able to get back an easement. That issue is something staff could look into.

Commissioner Schwartz commented that many people abandon a right-of-way in order to make setbacks work. He would rather see the City be more flexible so that those areas can be retained for future use. Vice-Chairman Heitel agreed that every time the City abandons a right-of-way, a future opportunity is forfeited.

In response to an inquiry by Commissioner Steinke regarding proactive abandonment initiatives on a large scale, Ms. Galav explained that the City tries to keep rights-of-way as much as possible unless there are reasonable grounds for abandonment. The City could look at it in a comprehensive way and come forward with an abandonment program. A study would be required to determine what would be the cause for voluntarily giving up those property rights.

In response to an inquiry by Commissioner Steinke regarding the most common legal challenges related to abandonments, Mr. Ward stated that they are usually not challenged. Few lawsuits relating to abandonments have been filed in the last decade; all were related to approval of an abandonment.

Chairman Steinberg noted that there was one public speaker.

Mr. Howard Myers, 6631 East Horned Owl, addressed the Commission. He opined that only the property owner benefits from abandonments, not the City. He noted that one of the ESL amendments concerning side yard setbacks is an amended standards issue which would allow property owners to amend their standards in ESL to better fit their lot.

Full abandonments limit circulation and utility options. Mr. Myers opined that many traffic issues would have been avoided had there not been so many rights-of-way abandonments. Mr. Myers opined that partial abandonments are as important as full abandonments, noting many uses for excess width of rights-of-way uses. Trails would be non-existent if not for rights-of-way. He believes that the City ought to keep all of the right-of-way and excess right-of-way.

Mr. Myers opined that if the City abandons its interest building permits which would block access should not be allowed because the City could be getting into a legal quandary. He noted that there should be at least two accesses to a property in case of flooding.

#### **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission adjourned at 5:57 p.m.

Respectfully submitted,  
A/V Tronics, Inc.

**APPROVED**